REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BAGUIO COUNTRY CLUB
CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 2827

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - - x

10/15

D E C I S I O N

This is an appeal from the decision of the Commissioner of Internal Revenue assessing and demanding payment of the sum of P368,934.59, consisting of fixed taxes as alleged operator of mess hall, retail liquor dealer, dealer of fermented liquor and operator of bar from the 2nd sem. of 1969 to 1972, inclusive; percentage taxes for the years 1969-1972, as operator of mess hall, bar and lodging house, documentary tax on receipts of lodging house operator from 1969-1972, and equivalent amount for science stamp tax; twenty-five percent surcharge and interest on fixed and percentage taxes.

On September 2, 1974, petitioner through its auditors, filed a protest against the assessment.

While no formal denial has been issued by respondent Commissioner of Internal Revenue, service of the warrants of distraint and levy on petitioner on August 17, 1976 indicates respondent's determination to collect petitioner's tax liabilities and was taken by petitioner as the Commissioner of Internal Revenue's final decision. Hence, this appeal.

It is alleged that Section 191-A of the Tax Code, imposing the caterer's tax, under Republic Act No. 6110, as amended was vetoed by the President of the Philippines on August 4, 1969 and never became law.

It is further alleged that the service and facilities of petitioner are exclusively for members, their families and guests, and not for the general public; and that petitioner does not maintain a lodging house taxable under Section 191, and its activity of renting its cottages and rooms exclusively to its members, for nominal amounts to cover upkeep and maintenance, does not constitute a taxable business subject to fixed and percentage taxes, nor to documentary and science stamp taxes imposed on receipts issued by hotels, motels, resthouses, lodging houses and resort.

On March 31, 1982, this case was placed under Archive to await the adjudication by the Supreme Court of a case involving a similar issue: "Commissioner of Internal Revenue versus Manila Golf and Country Club, Inc., et. al., G.R. No. L-47421 (CTA Case No. 2630), an appeal to the Supreme Court since December 5, 1977.

That the appealed case of Commissioner of Internal Revenue vs. Manila Golf and Country Club, Inc., et. al., G.R. No. L-47421 (CTA Case No. 2630) has been decided by the Supreme Court in favor of respondent Commissioner of Internal Revenue on May 14, 1990. The Supreme Court held as follows:

> The petition now before Us presents an identical question: whether the presidential veto referred to the entire section or merely to the imposition of 20% tax on gross receipts of operators or proprietors of restaurants, refreshments parlors, bars and other eating places which are maintained within the premises or compound of a hotel, motel or resthouses. Reference to the Manila Hotel case, therefore, might have been sufficient to dispose of this petition were it not for the position of the CTA that a chief executive has no power to veto part of an item in a bill; either he vetoes an entire section or approves it but not a fraction thereof.
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> Herein private respondent, Manila Golf & Country Club, Inc. is non-stock corporation. True, it maintains a golf course and operates a clubhouse with a

lounge, bar and dining room, but these facilities are for the exclusive use of its members and accompanied guests, and it charges on cost-plus-expense basis. As such, it claims it should have been exempt from payment of privilege taxes were it not for the last paragraph of Section 191-A of R.A. No. 6110, otherwise known as the "Omnibus Tax Law." Section 191-A reads:

> "Sec. 191-A. Caterer. A caterer's tax is hereby imposed as follows:
>
> "(1) On proprietors or operators of restaurants, refreshment parlors and other eating places, including clubs, and caterers, three per cent of their gross receipts.
>
> "(2) On proprietors or operators of restaurants, bars, cafes and other eating places, including clubs, where distilled spirits, fermented liquors, or wines are served, three percent of their gross receipts from sale of food or refreshments and seven per cent of their gross receipts from sale of distilled spirits, fermented liquors or wines. Two sets of commercial invoices or receipts serially numbered in duplicate shall be separately prepared and issued, one for sale of refreshments served, and another for each sale of distilled spirits, fermented liquors or wines served, the originals of the invoices or receipts to be issued to the purchaser or customer.
>
> "(3) On proprietors or operators of restaurants,

> refreshment parlors, bars, cafes and other eating places which are maintained within the premises or compound of a hotel, motel, resthouse, cockpit, race track, jai-alai, cabaret, night or day club by means of a connecting door or passage twenty per cent of their gross receipts.
>
> "Where the establishments are operated or maintained by clubs of any kind or nature (irrespective of the disposition of their net income and whether or not they cater exclusively to members or their guests) the keepers of the establishments shall pay the corresponding tax at the rate fixed above." [underscoring ours]

Republic Act No. 6110 took effect on September 1, 1969. By this virtue, petitioner assessed the club fixed taxes as operators of golf links and restaurants, and also percentage tax (caterer's tax) for its sale of foods and fermented liquors/wines for the period covering September 1969 to December 1970 in the amount of P32,504.96. The club protested claiming the assessment to be without basis because Section 42 was vetoed by the President Marcos. The veto message read:

"MALACANANG
Manila

August 4, 1969

"Gentlemen of the House
of Representatives:

"I have the honor to inform you that I have this day signed H.B. No. 17839, entitled:

'AN ACT AMENDING
CERTAIN PROVISIONS
OF THE NATIONAL INTERNAL
REVENUE CODE, AS AMENDED'

"Pursuant to the provisions of Section 20-(3), Article VI, of the Constitution, however, I have vetoed the following items in this bill:

"xxx xxx xxx
pp. 44, SEC. 42. Inserting a new Section 191-A which imposes a caterer's tax of three percent of the gross receipts of proprietors or operators of restaurants, refreshment parlors and other eating places; three percent of the gross receipts from sale of food or refreshment and seven percent on gross receipts from the sale of distilled spirits, fermented liquors or wines, on proprietors or operators of restaurants, bars, cafes and other eating places, including clubs, where distilled spirits, fermented liquors, or wines are served; and twenty percent of gross receipts on proprietors or operators of restaurants, refreshment parlors, bars, cafes and other eating places maintained within the premises or compound of a hotel, motel, resthouse, cockpit, race tract, jai-alai, cabaret, night or day club, or which are accessible to patrons of said establishments by means of a connecting door or passage.

> 'The burden of taxation will be shifted to the consuming public.
>
> 'The development of hotels, essential to our tourist industry, may be restrained considering that a big portion of hotel earnings comes from food sale. xxx'

"This bill, H.B. No. 17839, has become Republic Act No. 6110.

"Respectfully,

"(SGD) FERDINAND E. MARCOS [underscoring ours]

The protestation of the club was denied by the petitioner who maintains that Section 42 was not entirely vetoed but merely the words "hotels, motels, resthouses" on the ground that it might restrain the development of hotels which is essential to the tourism industry. This is in fact was the position of the House Ways and Means Committee which reported, to wit:

> "When Congress decided to split Section 191 into two parts, one dealing with contractors, and the other dealing with those who serve food and drinks, the intention was to classify and to improve. While the Congress expanded the coverage of both 191 and 191-A, it also provided for certain exemptions. The veto message seems to object certain additions to 191-A. What

additions are objectionables can be gleaned from the reasons given: a general reason that this sort of tax is passed on to the consuming public, and a particular reason that hotel developments, so essential to the tourist industry, may be restrained. These reasons have been taken together in the interpretations of the veto message and the deletions of such enterprises as are connected with the tourist industry has therefore been recommended.

"To interpret the veto message otherwise would result in the exemption of entities already subject of tax. This would be absurd. Where the Congress wanted to exempt, it was so provided in the bill. While the President may veto any item or items in a revenue bill, the constitution does not give him the power to repeal an existing tax. (2nd Indorsement dated December 9, 1969, Chairman on Ways and Means, Sixth Congress of the Republic of the Phil.) (Exhs. 14, p. 85, B.I.R. rec.)." (pp. 20-21, Rollo)

It was by reason of this interpretation of the Committee that R.A. No. 6110 was published in Volume 66, No. 18, p. 4531 of the Official Gazette (May 4, 1970) in such a way that Section 191-A was included in the text save for the words "hotels, motels, resthouses."

As already mentioned, the Court of Tax Appeals, upon petition by the club, sustained the latter's position reasoning that the veto message was clear and unqualified, as in fact it was confirmed three years later, after much controversy, by the Office of the President, thus:

> "Mr. Antero M. Sison, Jr.
> San Martin Building, 1964,
> A. Mabini, P.O. Box 2288
> Manila, Philippines
>
> "Dear Sir:
>
> "With reference to your letter dated July 14, 1972, we wish to inform you that Section 42 (which contains Sec. 191-A) of House bill No. 17839, now R.A. 6110 was one of the Sections vetoed by the President in his veto message dated August 4, 1969, vetoing certain sections of the said revenue bill.
>
> Very Truly Yours,
>
> "(SGD.) TRINEO T. AGUIRRE, JR.
> Presidential Staff Assistant"
>
> (p. 49, Rollo)

As mentioned earlier, We have already ruled that the presidential veto referred merely to the inclusion of hotels, motels and resthouses in the 20% caterer's tax bracket but not to the whole section. But, as mentioned earlier also, the CTA opined that the President could not veto words or phrases in a bill but only an entire item. Obviously, what the CTA meant by "item" was an entire section. We do not agree. But even assuming it to be so, it would also be to petitioner's favor. The ineffectual veto by the President rendered the whole section 191-A as not having been vetoed at all and it, therefore, became law as an unconstitutional veto has no effect whatsoever. (See Bolinao Electronics Corp. v. Valeria, No. L-20740, June 30, 1964, 11 SCRA 486).

However, We agree with then Solicitor General Estelito Mendoza and his associates that inclusion of hotels, motels and resthouses in the 20% caterer's tax bracket are "items" in themselves within the meaning of Sec. 20 (3), Art. VI of the 1935 Constitution which, therefore, the President has the power to veto. An "item" in a revenue bill does not refer to an entire section imposing a particular kind of tax, but rather to the subject of the tax and the tax rate. In the portion of a revenue bill which actually imposes a tax, a section identifies the tax enumerates the persons liable therefor with the corresponding tax rate. To construe the word "item" as referring to the whole section would tie the President's hand in choosing either to approve the whole section at the expense of also approving a provision therein which he deems unacceptable or veto the entire section at the expense of foregoing the collection of the kind of tax altogether. The evil which was sought to be prevented in giving the president the power the disapprove items in a revenue bill would be perpetrated rendering that power inutile (See Commonwealth ex rel. Elkin v. Barnett, 199 Pa. 161, 55 LRA 882 [1901]).

WHEREFORE, We so hold that petitioner, Baguio Country Club Corporation, is liable to pay caterer's tax in the amount of P368,934.59. With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, October 15, 1990.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

ALEX Z. REYES
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

CONSTANTE C. ROAQUIN
Associate Judge
Court of Tax Appeals